

## REMARKS

Applicants appreciate the Examiner indication that Claims 48 and 49 are in a condition for allowance over the prior art but must still overcome the double-patenting rejection. As explained below, the double-patenting rejection has now been overcome. Therefore, it is respectfully requested that these claims be allowed.

Applicants will address each of the Examiner's remaining rejections in the order in which they appear in the Office Action.

### Claim Rejections - 35 USC §102

In the Office Action, the Examiner rejects Claims 29, 33, 43, 44 and 47 under 35 USC §102(e) as being anticipated by Nita et al. (US 5,542,917). This rejection is respectfully traversed.

While Applicants traverse this rejection, in order to advance the prosecution of this application, Applicants have amended independent Claims 29 and 44 to recite "a treating element comprising a hollow cylinder encapsulating a radioactive material." It is respectfully submitted that Nita does not disclose or suggest such a treating element.

In contrast to the claimed invention, Nita is directed to an ultra-sound catheter which has an ultrasound transmission member or wire "extending longitudinally therethrough" (see Abstract in Nita). As explained in Col. 5, Ins. 17-23 of Nita, the ultrasound transmission member or wave guide (24) extends longitudinally through the lumen of the catheter body to transmit ultrasound energy from an ultrasound transducer connected to the proximal end of the catheter to the distal end thereof. There appears to be no disclosure or suggestion of a treating element which has radioactive material, or a treating element comprising a hollow cylinder encapsulating the radioactive material, or a

catheter in which the treating element is movable by means of pressurized fluid, as in independent Claims 29 and 44.

The Examiner has already stated that such amendments and arguments are persuasive to overcome the rejection over Nita. See Office Action of December 16, 2004.

Accordingly, for at least the above-stated reasons, independent Claims 29 and 44 and the claims dependent thereon are clearly patentable over the cited reference. Therefore, it is requested that this rejection be withdrawn.

#### Claim Rejections - 35 USC §103

The Examiner also rejects Claims 30, 31, 32, 35, 37, 42 under 35 USC §103(a) as being unpatentable over Nita et al. This rejection is also respectfully traversed.

Each of these claims is a dependent claim. Therefore, for at least the reasons discussed above for the independent claims, these claims are also patentable over Nita. Accordingly, it is respectfully requested that this rejection be withdrawn.

#### Double Patenting

The Examiner also rejects Claims 29, 32, 33, 34, 35, 37, 43, 44, 47, 48 and 49 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of US 5,683,345. This rejection is also respectfully traversed.

While Applicants traverse this rejection, in order to advance the prosecution of this application, Applicants are submitting a terminal disclaimer and fee over the '345 patent. Accordingly, it is respectfully submitted that this rejection has been overcome, and it is requested that the rejection be withdrawn.

Conclusion

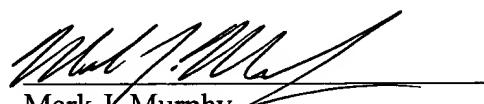
Therefore, it is respectfully submitted that the present application is in an allowable condition and should be allowed.

If any further fee is due for this amendment or terminal disclaimer, please charge our deposit account 50/1039.

Favorable reconsideration is earnestly solicited.

Respectfully submitted,

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